



<u>Decision Ref:</u>	2021-0231
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Variable Mortgage
<u>Conduct(s) complained of:</u>	Failure to process instructions in a timely manner Delayed or inadequate communication Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to several mortgage loan accounts held by the Complainants with the Provider and secured by two properties.

The Complainants' Case

The Complainants hold mortgage loan accounts with the Provider secured by two properties, 69 L and 23 A. The Complainants moved to sell 69 L in **November 2016**. The Complainants' representatives state that the Provider failed to respond to any of the correspondence from the Complainants in connection with the consent to the sale of the property. The Complainants submit that their representative spoke to Mr. P of the Provider on **20 December 2017** and that he indicated that if both properties were on the market, contacts could be furnished showing the sales prices and if these exceeded the amounts owing, then no consents would be necessary, and the sales could proceed. The Complainants' representatives submit that the sale subsequently fell through, as a result the Provider's failure to respond to their letters.

The Complainants argue that both properties were put on the market in **January 2018**. In a letter to the Provider dated 16 January 2018, the Complainants' representatives requested title documentation for 23 A for the purpose of preparing a contract for sale of the property. The Complainants submitted a document dated **22 February 2018** from a third party which confirmed the sale of 67 L had been agreed with a proposed purchase price of €590,000. The Complainants also submit that a document dated **6 March 2018** from a third party confirmed that the sale of 23 A had been agreed for a purchase price of €345,000.

In a letter to the Provider dated 5 April 2018, the Complainants' representatives indicated that they had neither received the statements relating to the mortgage accounts nor the title documents to 23 A.

By **April 2018**, the first Complainant indicated that it was looking increasingly like they would lose both buyers for both properties because of delays from the Provider. He indicated that the combined sale price for both properties exceeded the outstanding balance owing to the Provider and could not see why the matter could not be progressed urgently so that all borrowings could be paid off in full. By **June 2018**, the purchasers for 69 L had withdrawn. The Complainants submit that there was a lack of response or involvement by the Provider in relation to the sales of the mortgaged properties. The Complainants argue that there was also an initial delay in issuing redemption figures for the accounts.

The Complainants' representatives refer to the Provider's position that it did not receive copies of contracts for sale for the two properties. The Complainants deny that there was any written request from the Provider for contracts for sale and they argue that they would not have been in a position to furnish contracts for sale, as neither of the solicitors acting for the proposed purchasers would sign a contract without evidence that the Provider was prepared to discharge the relevant mortgages. They argue that two Sales Advice Notices were sent to the Provider on **16 March 2018**. The Complainants' representatives argue that in a letter dated 5 April 2018, they asked the Provider to confirm that it would release each of the two properties, on receipt of the net proceeds of sale. They argue that the purchasers' solicitors required confirmation that the mortgages would be released. The Complainants' representatives argue that the Provider's response indicates serious delays on its part and intransigence in dealing with the reasonable request to sell the two properties separately. They argue that the Provider seems to be obsessed with its procedures and adhering to them rather than seeing the overall picture. They point to the Provider's behaviour in insisting on a letter of authorisation in respect of a solicitor working on the file, even though it had been informed that the previous solicitor was retiring.

The Complainants' representatives argue that the Complainants were in position to settle their debts, if the Provider had cooperated with the sale of the properties. They argue that by 2018, the property market had recovered sufficiently to sell the properties at a price sufficient to clear the debt, but the Provider delayed and failed to cooperate with the result that the proposed sales collapsed. The Complainants believe that the offer from the Provider of €7,000 is derisory in light of the stress, expense and losses suffered by them and the fact that it seems likely that the properties will not sell at the prices obtainable in 2018.

The Complainants' representatives argue that the Sale Advice Note dated 22 February 2018 in respect of number 69 L shows a sale price of €590,000. They argue that it would have been the first property to be sold and the proceeds would have gone a long way to repaying the sums due to the Provider. They argue that the sale of the second property at 23 A would have discharged the outstanding balances. The Complainants' representatives argue that the Provider was being petty, in looking for a fully completed Standard Financial Statement (**SFS**) when the two Sales Advice Notices clearly showed that all liabilities to the Provider could be discharged out of the proceeds of sale.

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The Complainants' representatives argue that their letter of **16 March 2018** was of vital importance and the Provider's failure to deal with this, even when reminded by letter dated **5 April 2018**, resulted in the two sales being lost. The Complainants' representatives say that the Provider appears to miss the point that, although it is accepted that the two sales would have realised sufficient funds to discharge the entire liability, they (ie the representatives) could not tell if the sale of the individual properties would be sufficient to result in the mortgage affecting each property, being released by the Provider.

They argue that any solicitor in closing the sale of a property which is mortgaged, must furnish an undertaking that they will redeem the mortgage and furnish a discharge/release of the relevant mortgage. As the Provider refused to split the loans and attribute the relevant sums to the separate properties, they were unable to give the required undertakings in relation to each sale.

The Complainants' representatives argue that on **22 June 2018**, the Provider's representative refused to speak to one of the Complainant's representatives (M) as the Complainants' letter of authority specified one C, a retired solicitor from the same practice. Their representatives argue that the same agent of the Provider spoke to M on 1 June 2018. The Complainants' representatives argue that once the letter of authority issue was sorted out by submission of a new letter of authority on 10 July 2018, the Provider wrote to the Complainants seeking superfluous information. They argue that even by **3 October 2018**, the Provider was seeking a completed SFS but it was pointed out to the Provider that they had never received a response to a letter of **2 July 2018**.

The Complainants argue that every time a reasonable proposal was put to the Provider the only response received was in relation to an SFS. They argue that every time the Complainants attempted to furnish SFS, it was rejected on some spurious ground including seeking six-month business account statements from the first Complainant. The Complainants' representatives wonder what relevance this could have had to the sale of the properties, when the sales were sufficient to discharge all liabilities to the Provider.

The Complainants state that they have suffered unquantified loss due to further arrears, interest and legal costs that have been incurred.

The Provider's Case

The Provider identifies three mortgage loan accounts (*****006, *****196 and *****279) in the joint names of the Complainants. Each of the three accounts were secured against two properties, 69 L and 23 A. Each of the mortgage loan accounts fell into arrears in 2010/2011 and the Provider says that no payment had been made to the accounts since 2011. The Provider says that all of the Complainants' mortgage loans were sold to a third party on **14 June 2019**.

The Provider says that it was contacted by the first Complainant by phone on **21 November 2016** and informed that he had agreed to sell 69 L for €500,000. As it was not a positive equity sale (i.e. the proceeds of the proposed sale would not be sufficient to repay the associated loans in full), the Provider says that the first Complainant was requested to submit a note of all fees to be deducted from the sale proceeds, a completed SFS, a proposal for the residual debt, a valuation and confirmation from the solicitor that the sale was at arm's length.

The Provider says that it received an SFS on **30 November 2016** but on 6 December 2016, the Provider wrote to the Complainants outlining documents that were outstanding for an assessment to be completed. The Provider says it received a letter from the Complainants' solicitors dated 2 December 2016 advising that the transaction was at arm's length and this included details of a proposal and details of costs, but the outstanding documentation was not included. The Provider says that it received a letter from the Complainants' solicitor dated 6 January 2017 stating that it was waiting to hear from the Provider on the matter of the consent to sale. The Provider says that on 12 January 2017, it called the Complainants' solicitor, C. The Provider says that when C returned the call, he refused to complete the data protection questions, so the telephone call could not proceed.

The Provider says that because it did not receive the documents outlined in its letter of 6 December 2016, it was not a position to complete an assessment of the proposal dated **2 December 2016**, submitted to it by the Complainants' solicitor.

The Provider says that the properties at 69 L and 23 A were held as security for all of the related accounts, so the Provider could not release security in the absence of an agreed repayment plan on the residual debt. It explains that the expected sale proceeds for the property at 69 L solely, would not have been sufficient to fully redeem all of the associated loans.

The Provider says that in the absence of a contract for sale confirming that the sale proceeds would have been sufficient to clear the related loans in full, the Provider sought proposals for the residual debt along with a set of up-to-date financial information, in order for an assessment to be completed by the Provider.

The Provider highlights a telephone call with the Complainants' solicitor on **20 December 2017**. It says that it was explained during that call (i) what was required by the Provider in the event of a positive equity sale and (ii) what was required by the Provider in the event of a negative equity sale:-

- In a positive equity sale (i.e. where the sale of assets is guaranteed to clear the outstanding associated debt in full), the Provider would seek a copy of the contracts for sale.
- In a negative equity case, the Provider would seek a completed SFS along with supporting documentation in order to complete an assessment and agree a repayment plan on the residual debt, after receipt of the sale proceeds.

The Provider points to a further telephone call with the Complainants' solicitor on **11 January 2018** in which the Provider was advised that an estate agent had been instructed to put both properties on the market and it was envisaged that it would be a positive equity case. The Provider indicates that it advised the solicitor that in such a case, the Provider would just require a copy of the contracts for sale. The Provider says that it has no record of receiving copies of contracts for sale for the two properties at 69 L and 23 A. In respect of arguments that the combined sale price for both properties would exceed the outstanding balance owing to the Provider, the Provider says that it was not provided with contracts for sale in respect of the properties. The Provider says that a receiver was appointed on **10 November 2017** to 23 A on the basis of outstanding arrears. The Provider explains that, after the call of 20 December 2017, the appointment of the receiver was put on hold, until January 2018 to allow the Complainants to progress the sale of the properties.

The Provider states that on **17 January 2018**, a letter was received from the Complainants' solicitor requesting statements for all three mortgage accounts. A reminder letter was sent by the Complainants' solicitor on **1 February 2018** and a telephone call was received from her on **12 February 2018**, as she had not yet received redemption figures. The Provider says that this was escalated to the relevant department. The Provider indicates that on **23 February 2018**, a further letter was received from the Complainants' solicitor regarding the statements requested and enclosing a sales advice notice with regard to the proposed purchase of 69 L. The Provider indicates that on **5 April 2018**, a letter was received from the Complainants' solicitors stating that it enclosed a copy of a letter from the proposed purchasers' solicitors with queries, but this enclosure cannot be located. An email was received from the Complainants' solicitor for redemption figures on **12 April 2018**.

The Provider states that on **13 April 2018**, redemption figures issued to the Complainants' solicitor. On 18 April 2018, the Provider sent the deeds of 23 A to the solicitors.

The Provider indicates that a complaint letter was received by it on **20 April 2018** in relation to the delay in issuing redemption figures and deeds. The Provider says that on 1 June 2018, a telephone call was made to the Complainants' solicitor and she was advised of the documents required for a negative equity consent to sale. Following this, on **5 June 2018**, a missing documents letter issued to the Complainants with a copy sent to their solicitors.

On **6 June 2018**, a final response letter was sent in response to the Complainant's complaint of 19 April 2018. The Provider says that on 22 June 2018, a call was made by it to the solicitors but as the letter of authority was specific to a then retired solicitor, the Provider advised that a new letter of authority was required. On **2 July 2018** the Provider states that it received a letter from the Complainants' solicitor which was sent to its complaints team. During a further call on **5 July 2018**, the Provider again informed the solicitors that a new letter of authority was required. A new letter of authority from the Complainants was submitted on **10 July 2018**.

The Provider states that on **9 August 2018**, it issued a missing documents letter to the Complainants. On 4 September 2018 and again on 20 September 2018, voicemails were left for the Complainants' solicitor to call the Provider regarding the outstanding documents.

During a telephone call on 3 October 2018, the Provider outlined that documents had been requested in June and August 2018. The solicitor referred to a letter sent to the complaints department on 2 July 2018. She also referred to a request to release security on a stand-alone basis, but states that she got no response. The Provider's representative indicated that if the properties were cross secured then both would have to be sold and explained that the Provider had not received the documentation required for consent to sales. The Provider's representative indicated he would follow up with the complaints team.

The Provider advises that the first Complainant called into it on **24 January 2019** indicating that he was looking to sell the properties on a positive equity basis, but could not get release of the deeds of the property as they were secured against one another. The Provider indicates that the First Complainant was advised to send a completed SFS and that a contact manager would be assigned to agree a partial release of the security. The completed SFS was received by the end of January 2019 but on review, not all information required had been supplied. A missing documents letter was sent to the Complainants and their solicitor. Thereafter there were several conversations and missed phone calls between the Provider and the Complainants' solicitors and various requests for missing documentation to be submitted. By **5 March 2019**, the Provider indicated that it received some outstanding documentation but there was still some information outstanding. On **14 June 2019**, the loans were sold to a third party.

The Provider apologises for its delay in issuing redemption figures on the account between January and April 2018. The Provider explains that cause of the delay was that the Provider required clarification on law costs accrued related to the Complainants' account, as these were to be included in the final redemption figures. The redemption figures were issued on 13 April 2018. The Provider says that its letter of 13 April 2018 it stated that upon receipt of funds to clear the account in full, the Provider would release its interest in the properties.

The Provider says that deeds to 23 A were released to the Complainants' solicitors on 18 April 2018. It says that the deeds had to be returned from another firm of solicitors and were not returned to Provider until 22 March 2018. The Provider acknowledges and apologises for the delay in releasing the deeds.

In respect to the data protection questions asked during phone calls, the Provider says that in order to comply with the General Data Protection Regulation (GDPR) when an agent of the Provider is making outbound calls or receives inbound calls to/from either a customer or an authorised third party, it must first identify the person it is speaking to, by asking security questions in order to proceed with the call. The Provider accepts that during the call of 20 December 2017, the staff member in question failed to carry out the required security questions that should have been completed first, in order to proceed with the call.

In respect of the documents, the Provider claims were missing in 2018, the Provider explains that the following documents were required to support the SFS submitted by the Complainants:

- the equivalent of a form 11;
- chapter 4 self-assessment form for 2015 or notice of assessment for 2015 as proof of income on the basis that the first Complainant was self-employed;
- three months of personal current account statements for the first named Complainant; and
- one month's wage slip for the second Complainant, dated within the past three months.

The Provider says that a letter was sent to the Complainants on **6 December 2016** outlining the documentation required to complete an assessment. While the Provider acknowledges that this letter was not sent to the Complainants' representatives, it says that it attempted to call the representatives on **12 January 2017** to discuss the outstanding documents.

The Provider says that the purpose of the assessment is to agree a repayment plan for the outstanding debt, after receipt of net sales proceeds. It says that to complete the assessment, income and expenditure details are required. It says that without the income documents outlined, the Provider could not proceed with the assessment to establish repayment capacity to service the debt.

The Provider says that when it is requested to release security, in the event of a positive equity sale, the Provider seeks a copy of the contract for sale, as proof that it is a positive equity sale. In the event that sales proceeds are not sufficient to redeem the loan in full, the Provider seeks an SFS and supporting documentation in order to complete an assessment of the residual debt. The Provider reiterates the position that the two properties were jointly held as security across the three loan accounts.

The Provider further says that the reason for referring to a negative equity sale in this case, is that the proceeds of each property individually would not have been sufficient to clear the associated loans in their entirety. In order for the Provider to consent to the sale of the properties, therefore, an assessment needed to be completed in respect of the debt that would have remained, after the sale of the first property to be sold. The Provider explains that although the expectation was that the proceeds from the two properties would clear the outstanding balances of the associated loans, the Provider still required a fully completed SFS along with supporting documents in order to progress an application for a partial release of the first security to be sold, as the remaining security (that was also to be sold) would have been the sole item of security for the remaining loan balances across the three associated loans, until such time as it was then sold and the proceeds were received.

The Provider says that it attempted to meaningfully engage with the Complainants in relation to the property sale but did not receive all the documentation requested and required so that a full assessment could be carried out by it in the event of the negative equity sale, in order to consent to the sales. On receipt of each SFS, the Provider indicates that it wrote to the Complainants advising what documentation was missing and requesting it. Ultimately, in the absence of an agreement between the Provider and the Complainants, and based on the level of arrears, the loans were included in a loan sale in **June 2019**.

The Provider acknowledges the delays in providing the title deeds and redemption figures when requested and apologises for this. It apologises for the error during a call on 20 December 2017 when a staff member failed to carry out the necessary data protection questions and it apologises that when it issued a letter of 6 December 2016 to the Complainants, a copy was not also issued to their solicitors.

In recognition of the length of time that the matters remained outstanding, and the service failings identified and apologised for, the Provider offered the Complainants a goodwill gesture of €7,000 in full and final settlement of the complaint.

The Complaint for Adjudication

The complaint is that:

1. the Provider failed to meaningfully engage the Complainants' representatives in relation to the sale of two properties;
2. the Provider wrongfully delayed in providing its consent to the sale of the Complainants' properties;
3. the Provider wrongfully delayed in furnishing documentation relevant to the same sales process, when requested; and
4. the Provider was inconsistent in its approach to a security questions contact with the Complainants' representatives in January 2017.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint. Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

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A Preliminary Decision was issued to the parties on **15 June 2021**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. In the absence of additional substantive submissions from the parties, within the period permitted, the final determination of this office is set out below.

It appears that the Complainants lost out on two property sales during **2018**, that would otherwise have cleared their debt in full to the Provider. The Complainants (or their representatives) blame the Provider for this state of affairs and point to the Provider's delays, its rigid adherence to policies and a suggested failure to see the bigger picture, for the fact that requested consent to sales never issued, resulting in the loss of the sales in question. The Provider acknowledges some delay on its part and has offered compensation to reflect this, but it says that it was obliged to follow its policies, that it explained on numerous occasions what was required from the Complainants in order to progress the sale, and that it could not agree to the sale of the properties in question, until it received the documentation that it had requested.

In reading the correspondence and listening to the audio recordings supplied in evidence, I have been struck by the fact that the Provider's representatives and the Complainants' solicitors were often at cross purposes, each blaming the other for the delays that occurred. It was the Complainants however who lost out, whilst the increasingly frustrated correspondence was exchanged. A very large volume of documentation and audio recordings has been submitted in respect of this complaint. While all of this has been considered, I note that the documentation and correspondence of most relevance, dates from between November 2016 and October 2018.

It is clear that by November 2016, the Complainants were in long-term and substantial arrears in respect of the mortgage accounts held with the Provider. The three mortgage accounts at issue were all secured on two properties, 69 L and 23 A.

2016

On **21 November 2016** the first Complainant rang the Provider to inform it that a sale had been agreed in respect of one of the properties, 69 L, for the sum of €500,000. He indicated his intention to sell the second property thereafter. The Provider explained that as it was a negative equity sale, the Provider would need a proposal for repayment of the remainder of the sums due to the Provider. The first Complainant was informed that the Provider would need a note of the costs of sale, a written proposal for the residual balance, confirmation the sale was at arm's length, a valuation and a completed standard financial statement (**SFS**). He was informed of the need to ensure that his solicitor (to whom he intended to give authority to contact the Provider) had his date of birth and account numbers for the purpose of answering security questions in respect of the account. He confirmed that his solicitors had title deeds for 69 L.

A SFS was submitted by the Complainants and acknowledged by letter dated **30 November 2016**. By letter dated **2 December 2016**, the Complainants' representatives wrote to the Provider confirming that the sale was an arm's-length sale, and further confirming the costs of sale that were required to be deducted from the sale amount. By letter dated 6 December 2016, the Provider wrote to the Complainants indicating that some supporting documentation had not been submitted with their SFS, and indicating that to assess the position, the Provider required certain listed income documentation from the Complainants. The Provider accepts that while this letter dated 6 December 2016 was sent directly to the Complainants, a copy was not sent to their representatives, as it should have been.

2017

By letter dated **6 January 2017**, the Complainants' solicitors wrote to the Provider referring to their letter of 2 December 2016 and indicating that it awaited the Provider's consent to the sale of the property. On 12 January 2017, the Provider rang the solicitor to explain that it was looking for additional documentation. As the solicitor dealing with the file was unavailable, the Provider requested that he call back. When C returned the Provider's call, he refused to provide the Complainants' date of birth or account information. The Provider explained that it was required to ask the security questions for data protection reasons and that it could not discuss the accounts until these questions were answered. C continued to refuse to answer the questions, stating that he was the Complainants' solicitor and that he was simply returning a call from the Provider. Because of his refusal to answer the security questions, the Provider indicated that it could not proceed with the call.

By letter dated **13 January 2017**, the Complainants' solicitors wrote to the Provider to complain that the Provider had refused to deal with the matter "*unless they were furnished with certain extraneous information*". The letter indicated that the writer would have no option but to refer the matter to the Central Bank of Ireland.

I am satisfied that the Provider was entitled and indeed obliged to ensure that the security questions were answered, before discussing the Complainants' private information and affairs. This would have been required if the Provider was speaking directly to an account holder, let alone an authorised third party. It is not clear why the Complainants' legal professional, was unwilling to comply with the Provider's request for him to answer the security questions but in the absence of doing so, the matter did not progress at that point. The Provider was unable to elaborate as the documentation that was still outstanding from the Complainants, in respect of the consent to sale. I do not consider that any blame attaches the Provider in respect of the outcome of this phone call.

In **June 2017**, the Provider made demand of the monies due in respect of the accounts. By letter dated 30 June 2017, the Complainant solicitors wrote to the Provider indicating that the Complainant attempted to sell the premises at 69 L but failed to obtain a response from the Provider. The letter argued that court proceedings or a report to the Central Bank would be considered. It does not appear that the Provider logged this letter as a complaint, as in my opinion, it should have, but this issue has not been raised by the parties.

On **10 November 2017**, a receiver was appointed over 23 A and his appointment was notified to the Complainants.

On **20 December 2017**, the Provider rang the solicitor in question and C phoned back. No security questions were asked of him and the Provider has acknowledged that this ought to have been done. The Provider's representative, P, very wisely in my opinion, indicated that he would like to progress the matter rather than getting caught up in arguing to and fro, as to who had been in the wrong. He explained that to progress the consent of sale, the Provider required a completed SFS and supporting documentation indicating salary and such information. He explained that the SFS received was incomplete and that the Provider had written out seeking missing documentation. In respect of the sale of the properties, the Provider explained that if it was a positive equity sale, then the Complainants did not require consent to sale and the Provider would need contracts of sale. He indicated that the Provider could not give the go-ahead until it received contracts for sale. C responded that this was fair enough. The parties discussed that there was cross-security in place in respect of the loans. The Provider indicated that it could hold off on the appointment of the receiver and it was noted that the balance of the three loan accounts amounted to **€842,904**. As the property at 69 L was worth a maximum of €600,000, the sale would not be sufficient to clear the total debt. C indicated that he was retiring and that his colleague M would be taking over. The Provider explained that for the sale to progress, the Provider would need certain documents including proof of income to show how the Complainants would repay the residual debt. It was hoped that the sale of both properties would clear the debt.

During this call on **20 December 2017**, the Provider clearly indicated the options that:

1. in the event of a positive equity sale, the Provider required contracts for sale;
2. if nothing was done to progress the sale, a receiver would be appointed and the Provider would require the title deeds returned; and
3. in the event of a negative equity sale, the Provider required proposals for the residual debt, a completed SFS and proof of income.

In my opinion, the phone call in question represented a much more collaborative tone between the parties and I am satisfied that the Provider was crystal-clear in respect of its requirements i.e. on what basis it could issue consents to the sale of the properties in question.

2018

On **11 January 2018**, P of the Provider returned a call from M who had taken over the Complainants' file from C. Data protection questions were asked and answered and the parties referred to the call which had taken place in December 2017. M indicated that she was seeking statements of account for the three loans. It has subsequently been clarified that this request was for redemption figures, which was understood also by the Provider at the time.

The Provider clarified that to progress matters, contracts for sale would be required in the event of a positive equity sale. In the event of a negative equity sale, the Provider would require a completed SFS and proof of income. The Provider indicated that it was missing documentation from the last SFS submitted, specifically proof of income. M indicated that she hoped it would be a positive equity sale. There was reference made by M to the fact that the Provider had not gotten back to them, but the Provider referenced the outstanding documentation and indicated it was trying to progress matters i.e. starting from scratch. M was informed she needed to request the statements in writing in relation all three accounts. The Provider indicated that it needed an update in respect of the properties, as the receiver was on hold. The Provider requested instructions in relation to the properties being on the market, in the letter. The parties discussed the fact that the Complainants' representatives required title deeds for 23 A and was informed that the solicitor needed to write a letter to that effect.

By letter dated **17 January 2018**, the Complainants' representatives wrote to the Provider addressed to P requesting the up-to-date statements (i.e. the redemption figures). She confirmed their instructions from the first Complainant that an auctioneer had been appointed to sell two properties. The letter referred to a previous sale that had fallen through in January 2017 "*as a result of the Provider's failure to respond to our letter of 6 January 2017*". Title deeds were requested for 23 A on 24 January 2018. A reminder letter was sent on 1 February 2018, again requesting the redemption figures.

On **12 February 2018**, M rang Mr. P stating that she had written for the redemption figures and title documents but had not received them. Mr. P stated that he would follow up internally and she should receive them within one week. By letter dated **23 February 2018**, the Complainant's representatives referred to previous letters and the telephone call noting that they had still not received redemption figures and requesting the figures urgently.

By further letter dated **23 February 2018**, the Complainants' representatives enclosed a copy of a Sales Advice Notice in respect of 69 L. The letter requested the redemption figures on an urgent basis as it was stated that the Complainants' representative did not know what account or accounts related to which premises. The enclosed Sale Advice Notice dated 22 February 2018 addressed to the first Complainant, informed him that a sale had been agreed in respect of 69 L for the sum of €590,000. (I note that this was €90,000 more than the figure agreed in November 2016).

By letter dated **6 March 2018**, the Complainants' representatives enclosed copies of two Sales Advice Notices in respect of the properties, one dated 22 February 2018 in respect of 69 L for €590,000, and the second dated 5 March 2018 in respect of 23 A for €345,000. The representatives asked again for redemption figures and title documents for 23 A.

By letter dated 5 April 2018, the Complainants' representatives wrote to the Provider indicating that they had received neither the statements relating to the accounts nor the title documents to 23 A. The letter stated that they had enclosed a letter dated 27 March 2018 from the proposed purchaser of 69 L and referred the Provider to queries 1 and 2 and sought responses to those queries.

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The letter requested that the Provider confirm that it:

“will release each of the properties on receipt of the net proceeds of sale in respect of each property.

Please urgently let us have a response to this letter to enable us to proceed with the sales.”

The letter dated **27 March 2018** requested confirmation that a condition regarding a solicitor’s undertaking regarding the redemption of the mortgage from the proceeds of sale on completion, could be inserted into contract for sale. It also sought confirmation that there would be sufficient proceeds of sale to fully redeem the Provider’s mortgage and that the Complainants’ solicitors had obtained up-to-date redemption figures in this regard. In the event that consent to sale was required by the Provider, the purchaser’s solicitors requested confirmation that the Provider had consented to the sale.

The Provider has indicated that it has no record of the enclosed letter dated 27 March 2018 but as it has confirmed receipt of the letter dated 5 April 2018 and that letter refers to the enclosure, and as no query was raised at that time, I take the view that the enclosed letter dated 27 March 2018 was sent to the Provider at that time.

By letter dated **12 April 2018**, the Complainants’ representatives wrote to the Provider referring to their letter of 5 April and enclosing an email from the first Complainant dated 10 April 2018 which indicated his fear that the sales would be lost owing to the Provider’s delays. They requested a final response letter as they intended to submit a complaint to this Office.

By letter dated **13 April 2018**, the Provider wrote to the Complainants’ representatives with the redemption figure requested. Redemption figures were provided for each of the three outstanding loans. The letter stated that the three identified loan accounts were secured by the properties 69 L and 23 A. The letter stated that *“on receipt of funds to clear the account in full we will release our interest in the properties.”* The letter also noted that a fee of €60 payable in respect of legal expenses associated with the release of the mortgage/charge.

Analysis

The Provider has, appropriately, acknowledged the significant delays experienced by the Complainants in respect of the redemption figures. The Provider has apologised for this delay and has offered compensation. Although the Provider accepts responsibility for the delay, it explains that it was awaiting costings from a receiver appointed in respect of one of the sales, before it could issue for redemption figures and that this is how the delay occurred. Be that as it may, a period of almost 3 months between the first request for redemption figures and receipt of those figures in my opinion, is very unsatisfactory and is unacceptable, especially in circumstances where the Complainants were under pressure to sell the properties in question, and they were attempting to do so. The first of the property sales was agreed on 22 February 2018 (ie 69 L) so the redemption figures were received approximately six weeks thereafter.

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I further note that although the redemption figures were sent by the Provider on 13 April 2018, there was no specific response in the Provider's letter to correspondence from representatives of the Complainants dated 5 April 2018 with regard to the requirements of the purchaser's solicitors. As noted above, I accept that the letter from the purchasers' solicitors dated 27 March 2018 was sent to the Provider. The Provider was specifically asked in the letter of 5 April 2018 to respond to the queries raised, ie as to the question of the redemption of the mortgage on 69 L and whether consent to sales was required. It certainly would have been preferable if the Provider had personalised its response enclosing redemption figures making specific reference to the request made or alternatively if it had sent a separate letter, and I am of the view that its communications fell short in this regard.

Be that as it may, the Provider's letter of 13 April 2018 clarified that both properties were cross secured on all three loans and stated that the mortgages would be released once the funds required to clear all three loans were received. Furthermore, and as set out in some detail above, during telephone calls dated 20 December 2017 and 11 January 2018, the Provider had made it very clear to the Complainants' representatives what was required by it to release the mortgages, in the event of either a positive or negative equity sale.

The Complainants' representatives were aware, or ought to have been aware, that the loans were cross secured against both properties. In my opinion, it should have been clear to the Complainants' representatives that they were not dealing with a positive equity sale here. I understand and appreciate that on the sale of both properties, it was hoped that the entire loan balances could be repaid in full. But there was no question of having synchronised contracts for sale signed, or that in some way, both sales would be completed the same time, such that the mortgages would be released at the same time.

Obviously, and as has been accepted in later correspondence from the Complainants' representatives to this Office, one property was going to be sold first. It appears that from early days, the property at 69 L was going to be sold first. On that basis, it was inevitably a negative equity sale, as receipt of funds from 69 L would not clear the mortgage loans in full. Simply because it was also planned to sell the second property, did not change that position. One would imagine in such circumstances that the Provider's consent to a negative equity sale of 69 L would have been likely to have been readily forthcoming if the proposal being made in respect of payment of the residual debt on the loan accounts, was that the sale of the second property would clear the residual. For the Provider's consent to a negative equity sale, however, it required submission of a completed SFS and supporting documentation in addition to the proposal.

It is unfortunate that the Provider did not take the opportunity at this juncture to explain its position more clearly. While I am satisfied that it had made efforts to clarify this to the Complainants and to their representatives, there seems to have been some confusion arising or an unwillingness by the Complainants to recognise that the proposed sales were negative equity sales, unless the Provider agreed to 'split' its security, and nominate each security against individual loan balances. It was never however obliged to agree to this.

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The point, however, is that the Provider could and, to my mind, should have been more clear when sending the redemption figures, that what was being proposed in the letter of 5 April 2018 amounted to two negative equity sales and, hence, it required a completed SFS and supporting documentation, despite the hope that the sale of both properties would clear the debts in full.

The title deeds to 23 A were sent to the Complainants' representatives on 18 April 2018.

By letter dated 20 April 2018, the Complainants' representatives wrote to this Office and copied the letter to the Provider. The letter requested that this Office investigate the treatment of the Complainants by the Provider and the lack of response from the Provider to the correspondence of the representatives. The Provider sent a complaint holding letter dated 24 April 2018.

By letter dated **30 April 2018**, the Complainants' representatives wrote to the Provider referring to the redemption figures received dated 13 April 2018. The Complainant's representatives stated as follows:

"Please let us clear redemption figures in respect of the sale of [23 A] and confirm that, on receipt of that sum, you will release any or all Mortgages on that premises."

A further holding letter in respect of the complaint was sent by the Provider on **4 May 2018**. By letter dated **15 May 2018**, the Complainants' representatives wrote to the Provider referring to the holding letter of 4 May 2018 and enclosing a letter dated 14 May 2018 from solicitors acting for the proposed purchasers of 69 L. The letter indicated that the solicitors awaited hearing from the Provider urgently. The enclosed letter dated 14 May 2018 from the third party solicitors indicated their frustration at the pace of the transaction and the failure of the Provider to provide express consent to the sale of the property. The letter noted that:

"We will not be in a position to proceed to Contracts or completion until we have further clarification from [the Provider] as per below.

We would ask you to furnish written confirmation from [the Provider] specifically stating their consent of the sale of [69 L] for the sale price of €590,000.00 and further, that on receipt of the agreed net proceeds of sale they will release their charge on title of the subject property.

We await hearing from you with letter of consent to sale from [the Provider] in advance of Wednesday, 23rd May 2018."

By letter dated **24 May 2018**, the Provider wrote to the Complainants' solicitors with redemption figures in respect of 69 L, noting the balances on all three of the accounts. The Provider's letter stated:

"I confirm that [69 L and 23 A] are on the same letter of offer and we cannot separate the accounts. On receipt of funds to clear all accounts we will release our interest."

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The Complainants' solicitors replied by letter dated **28 May 2018** enclosing a further letter of the same date from the proposed purchasers. The Complainants' solicitors stated as follows:

"It seems absolutely ridiculous to us that you cannot separate the Accounts relating to [69 L and 23 A] when we are in a position to sell both (separately) and discharge the sums due to your Bank.

As you will see from the letter from the Solicitors to the proposed purchasers for [69 L], they are threatening to withdraw from the transaction unless they receive confirmation from you that you are consenting to the sale.

The position is now extremely urgent from our Clients' point of view and we urgently await receipt of a reasonable response from you."

The enclosed letter dated **28 May 2018** from the proposed purchasers' solicitors stated that the purchaser would withdraw from the transaction unless he received final confirmation by **1 June 2018** that the Provider had reverted with specific written consent to the sale of the property.

On Friday 1 June 2018, G of the Provider rang the Complainants' representatives referring to their letter of 28 May. G clarified the documentation required by the Provider for consent to sale i.e. a fully completed SFS and supporting documentation to allow an assessment to be carried out. M asked that the Provider's request be put in writing. The Provider stated that once the documentation was received, it would carry out a full assessment and determine if was possible to provide a consent to the sale. She also indicated that there would be a reply to the complaint.

By letter dated **5 June 2018**, (the next working day) the Provider wrote to the Complainants and sent a copy of its letter to the Complainants' representatives. In that letter, the Provider indicated that it was awaiting the completed SFS and supporting documentation to allow an assessment to take place. The supporting documentation required was listed in the letter.

By letter dated 6 June 2018, the Provider issued a final response to the complaint of 20 April 2008. The Provider referred to the Complainants' dissatisfaction with the length of time taken to issue consent to sale of 69 L, and to correspondence from the proposed purchasers threatening to withdraw from the transaction, in the absence of the Provider's consent to sale. The Provider referred to the call between it and the first Complainant on 21 November 2016 in which he was advised that an SFS and a number of other confirmations were required. It noted that an SFS had been received on 30 November 2016, but there was insufficient information submitted to carry out the assessment. The Provider noted that the letter was issued on 6 December 2016 outlining the documents required, but that the documentation was not received, so an assessment for consent to sale could not progress. In the absence of further engagement, the case was passed back to the legal team and a receiver had been appointed in November 2017.

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The Provider's letter of 6 June 2018 noted that calls were made to the Complainants' representatives on 12 January 2017 to discuss the account, but that C did not answer the required security questions. It noted a letter from the representatives dated 20 January 2017 expressing dissatisfaction at being asked to provide information to carry out data protection checks. The Provider stated that completing data protection checks was part of its procedures and it cannot speak with customers or third party advisers without doing so.

The Provider referred to letter of 17 January 2018 in respect of the proposed sale of the properties and a request for up-to-date figures for three mortgage accounts. The Provider noted that this was not a simple case, as there were two properties involved which were cross secured, and a fixed asset receiver had been appointed over 23 A. The Provider noted that as previously advised, the properties were on the same letter of offer and could not be separated. It stated that the sale of the property 69 L would not clear the overall debt of approximately €850,000 and it was not considered to be a positive equity sale. In the circumstances, the Provider explained that an assessment was required to be completed in order for the Provider to consider a consent to sale. It stated that the completed SFS and supporting financial information was required to be submitted by the customers.

The Provider's letter of 6 June 2018 noted that it had delayed in issuing redemption figures in respect of the accounts. It explained that it had been awaiting confirmation from the receiver of the total amount due in costs, but apologised for the delay and inconvenience. It noted that redemption figures were issued to the Complainants' representatives on 13 April 2018 and re-issued on 24 May 2018 following a letter dated 30 April 2018. That letter of 24 May also explained why the accounts could not be separated. The Provider stated that a case manager, X, has now been assigned to the case and would be in contact shortly.

I am satisfied that the Provider's final response letter dated **6 June 2018** dealt with all of the issues raised by the Complainants and provided clarity to them on what was required from the Provider to progress the sales. There was no compensation offered to reflect the delays encountered but the Provider acknowledged those delays. Most importantly, the Provider explained that the cross-security in place, meant that the sale of 69 L was a negative equity sale and so the procedures required to issue consent to sale in those circumstances (the submission of an SFS and supporting documentation) were required by it, before its consent could issue. This position had also been communicated clearly during the call of 1 June 2018.

On **22 June 2018**, X of the Provider called the Complainants' representatives. Having tried unsuccessfully to speak to C who had retired, X explained that the letter of authority from the Complainants was specific to C and an updated letter of authority was required before she could speak to M. M was frustrated by this and reminded X that she had spoken to her previously (i.e. on 1 June 2018). X repeated the requirement for an updated letter of authority. M insisted that the Provider's request be made in writing.

A copy of the original letter of authority dated **22 July 2014** has been submitted in evidence. I am satisfied that the Complainants gave authority to the Provider to speak to C and not more generally to the firm.

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While I appreciate on a human level, that M was frustrated that one individual had spoken to her on one occasion and refused to do so the next occasion, I am satisfied that the Provider was correct to request an updated letter of authority on this occasion, as the original authority was specific to a then-retired solicitor. I note, however, that the Provider did not follow up with a request in writing for an updated letter of authority (as M had sought) though that request was somewhat strange in circumstances where it was the Complainants who were requesting that the Provider communicate with their authorised third party. Considering the Provider's position that it required an updated letter of authority and this was made clear to M during this phone call, the insistence on the Provider following up in writing, could only result in further delay. However, I am satisfied that the Provider agreed to follow up by letter in writing, and then, it failed to do so.

On **2 July 2018**, the Complainants' representatives wrote to the Provider confirming receipt of a signed contract in respect of 23 A and enclosing the first two pages of the contract. The letter noted that if both sales proceeded, there would be in excess of €34,000 due to the Complainants. The letter noted that although the proposed purchasers of 69 L had formally withdrawn, they may still be in a position to purchase the property. The letter stated as follows:

"In the circumstances that the sale of both properties will realise more than is due to the Bank we call on you to furnish us with Redemption Figures and Consent to Sale in respect of each property and we can then proceed to try to close both sales."

The Provider called the Complainants' representatives on 5 July 2018 and having again tried unsuccessfully to speak to C, the Provider explained again that it required an updated letter of authority to speak to another member of the practice. M stated that she had requested a written request for an updated letter of authority which had not been received and further noted that personnel of the Provider had spoken to her previously. The Provider's representative confirmed that the letter of authority was specific to C and so an updated letter was required. M again requested that the Provider make a request in writing for the updated letter of authority. By letter dated **10 July 2018**, an updated letter of authority from the Complainants was sent to the Provider, which included the entire firm.

By letter dated **9 August 2018**, the Provider wrote to the Complainants indicating that it had yet to receive the completed SFS and listed supporting documentation, sought on 5 June 2018. On **4 September 2018**, the Provider attempted to call the Complainants' representatives and left a voicemail for them to return the call. The call was not returned.

The Provider did not respond directly to the Complainants' representatives' letter of 2 July 2018 in which they called upon the Provider once again, to issue consent to sales in respect of the properties. This was a communications failure by the Provider and in my opinion, it ought to have replied to the letter of 2 July 2018. I accept, however, that it attempted to contact the Complainants' representatives by phone on receipt of the letter of 2 July 2018 but ran into a problem in respect of the letter of authority, which has been set out above.

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Furthermore, it sent a reminder letter dated 9 August 2018 in respect of the documentation that it was missing, in order to progress an assessment for the purposes of consents to sale. Finally, I am of the view that the Provider had already made its position clear in respect of what was required in order for it to assess whether it would consent to the sale of the properties. In my opinion, the difficulty which arose was because the Complainants' representatives simply did not accept the Provider's response.

The Provider had communicated on a number of occasions that in the event of a negative equity sale, it required a fully completed SFS with supporting documentation to assess the position in respect of the residual debt after the sale of the first property. The Complainants' representatives, somewhat understandably, wanted the Provider to view the sales together, such that the two sales would clear off all remaining debt. The Complainants' representatives therefore saw the sales as positive equity sales. As explained further above, however, neither sale was a positive equity sale, due to the fact that the properties were cross-secured. One property would have to be sold first and then the second property would be sold. The Provider was therefore being asked to release the mortgage on one of the properties, leaving a residual balance in respect of the three loan accounts secured against only one property. Even though I appreciate that the Complainants planned to sell the second property in order to pay the residual loan balance, an intention to do so is not the same thing as the properties being sold on a positive equity basis. Furthermore, no contract for sale had been submitted in respect of 69 L, as had been the Provider's stated requirement.

The Complainants' representatives refused to accept this position although it had been made clear to them by the Provider on numerous occasions. While I have some sympathy for their view that the Complainants' income had little relevance, where it was proposed to sell both properties for a combined sum that would clear all of the debt, the Provider was being asked to release one of its securities for less than the sums due on the accounts. I am satisfied that it was not unreasonable therefore for the Provider to require an assessment to be completed, before it could agree to this.

As there was no certainty with regard to the property sale, I am also satisfied that it was not unreasonable for the Provider to request income information so that it could satisfy itself that the residual debt could be met. This information may have been less relevant to the Complainants' case than in other cases of a partial security release, but the Provider is entitled (and indeed it is considered good practice) to have policies and procedures in place to deal with different circumstances. I understand that the Complainants' representatives were exasperated by this, but an obvious solution was open to them, and had been open to them since November 2016 – to simply ensure that the Complainants submitted a completed SFS with full supporting documentation. If this had been done, it seems unlikely to me that the impasse would have arisen. Rather, the property sales could have been completed, as it seems to me on the evidence available, very likely that the Provider would have consented to the sales in the circumstances that presented, if its requirements, as to proof income details, had been met.

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I am of the view that the Provider should have responded clearly to the letter of 2 July 2018 setting out its position in respect of the request, but I am conscious that this failure must be set against a background of its other attempts to contact the Complainants' representatives and its clear position as to what it would require, in order to issue consent to sales.

On **3 October 2018**, D of the Provider called the Complainants' representatives and went through the required security questions. He noted that the Provider had issued missing documents letters both on 1 June 2018 and 8 August 2018 in respect of what was required from the Complainants to progress the consent to sales. The Complainants' representatives objected to the need for an assessment in the case, as there was a plan to sell the properties. The Provider explained that its policies required an assessment in the circumstances and that this had been communicated to the Complainants' representatives during phone calls with previous managers and the matter had been discussed in detail. D indicated that he could not change the Provider's policies. He indicated that if the required documentation was not forthcoming, they were in something of a stalemate, because the Provider required the documents in order to issue the consents to sale and the Complainants could not complete the sales without those consents. M referred to her letter of 2 July 2018 where she stated that there would be a balance of €34,000 remaining after the two sales, but that there had been no reply to her letter. She stated that both sales had now been lost and the Provider's processes were "*rubbish*". She stated that her letter of 2 July 2018 had been ignored.

The Provider pointed out that it had made several requests of the Complainants in regard to what it required to issue the consents to sale, and this was requested again by letter dated 8 August 2018. M stated that the Complainants were contemplating issuing proceedings or progressing complaints with this Office. The Provider indicated that they were entitled to do so, but that if the Complainants wanted to progress the sales, the Provider needed the documents that it had repeatedly requested. He asked if the Complainants would submit the completed documentation and the Complainants' representatives indicated that they would not. The Provider confirmed that it could not progress consents to sale without the requested documentation.

There was further contact between the parties between December 2018 and March 2019, with the Provider continuing to request a completed SFS with supporting documentation. I acknowledge that the Complainants submitted an SFS on **31 January 2019** and thereafter the Provider requested additional supporting documentation, not all of which was submitted before the Complainant's loans were sold to a new owner. In the letter of 31 January 2019, the Complainants' representatives indicated that they had been instructed that the completed SFS was sent to them by the Complainants in August 2018 but that they did not receive it.

This is an unfortunate situation where, as a result of communications failures, delays, and an ongoing refusal to comply with requests, two property sales were lost during 2018 which, if completed, would have resulted in the clearing of the Complainants' debts with the Provider.

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The Complainants (and their representatives) wish to apportion blame to the Provider for the loss of the sales. I am not however satisfied that the evidence bears out the Provider's responsibility in this regard.

Certainly, I take the view that the Provider must accept some responsibility for the communications shortcomings which have been identified above. When viewed in the round however, in my opinion, it was the failure and/or refusal of the Complainants and/or their advisers to submit the documentation that the Provider had requested and required, in order to progress the consent to sale, that ultimately led to the loss of the sales.

That being said, I am satisfied that there were a number of errors by the Provider in these instances, mainly involving failures in its correspondence. Firstly, it failed to send a copy of the missing documents letter to the Complainants' representatives on 6 December 2016. The missing documents letter was sent to the Complainants personally but should also have been sent to the Complainants' representatives. I note, however, that the Provider attempted to phone the Complainants' representatives in January 2017 but, due to the position adopted by C, the Provider was unable to communicate its requirements.

Secondly, there was an undoubted, and acknowledged, delay by the Provider in issuing redemption figures and title deeds to the Complainants in 2018. There was a delay of almost 3 months in issuing the redemption figures in respect of the three accounts. This period is unacceptable.

Thirdly, the Provider should have responded more directly and clearly to the letter of 5 April 2018 in which the Complainants' representatives requested confirmation of the release of the Provider's security on the sale of 69 L. Although the Provider's position could be extrapolated from its letter of 13 April 2018 and previous phone calls nevertheless in my opinion, the position should have been set out more clearly at this point (as it ultimately was by letter dated 6 June 2018).

Fourthly, the Provider failed to send a written request for an updated letter of authority after the 22 July 2018, when it indicated that it would do so. This may have contributed to some small delay, though as noted earlier, I am not of the view that such a written request was in fact required by the Complainants' representatives, as it was made clear to her that an updated letter of authority was required and there was nothing to prevent this being obtained from the Complainants.

Fifthly and finally, the Provider failed to reply to the letter of 2 July 2018 when it ought to have. Again, I appreciate that its failure was in the context of other attempts to contact the Complainants' representatives and its requirements having been repeatedly set out and clarified prior to receipt of the letter of 2 July 2018. That being said, however, the Provider should have responded directly to the letter of 2 July 2018 and it failed to do so.

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I take the view that these failures in communication represent a breach of the following provisions of the Consumer Protection Code 2012:

“A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:

2.2 acts with due skill, care and diligence in the best interests of its customers

...

2.6 makes full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer . . .

4.1 A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. . . .

4.2 A regulated entity must supply information to a consumer on a timely basis. In doing so, the regulated entity must have regard to the following:

a) the urgency of the situation; and

b) the time necessary for the consumer to absorb and react to the information provided.”

In light of its communications shortcomings, I am of the view that compensation to the Complainants is merited. I appreciate that the Complainants felt frustrated in their attempts to sell the properties, which had been urged on them by the Provider itself. In the context of that pressure, I am of the view that the Provider’s significant delay in issuing redemption figures was particularly blameworthy.

I note the Provider has offered a compensatory amount of €7,000 to the Complainants which, in the overall circumstances of the failures of the Provider, I consider to be reasonable. I note that this figure was offered when the Provider originally sent its formal response to this complaint in April 2020. In my preliminary decision therefore, I indicated that in those circumstances, given that reasonable redress had already been offered by the Provider, then on the assumption that this figure was still open to the Complainants to accept, I did not consider it necessary or appropriate to uphold this complaint; instead I noted that it will be a matter for the Complainants to make direct contact with the Provider, if they wish to accept that compensatory measure.

Since then, the Complainants have indicated a desire to accept that compensatory offer from the Provider, and it will be appropriate therefore for the Complainants to liaise directly with the Provider to make suitable arrangements for the transfer of funds.

Accordingly, for the reasons outlined above, this complaint is not upheld.

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Conclusion

My Decision, pursuant to **Section 60(1)** of the ***Financial Services and Pensions Ombudsman Act 2017*** is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



MARYROSE MCGOVERN
Deputy Financial Services and Pensions Ombudsman

7 July 2021

Pursuant to **Section 62** of the ***Financial Services and Pensions Ombudsman Act 2017***, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,

and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.